

## **PUBLIC MEETING MINUTES**

October 16, 2008

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

### **Members Present**

Karen L. Neuwald, Chair  
Sally M. McKeag, Member  
Robin W. Wesley, Member  
Tiffany Rystrom, Member  
Alice Dowdin Calvillo, Member

### **Staff Present**

Tami Bogert, General Counsel  
Les Chisholm, Division Chief, Office of the General Counsel  
Bernard McMonigle, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer

### **Call to Order**

Chair Neuwald called the Board to order for a return to the open session of the August 7, 2008 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session in August, the Board has issued PERB Decision Nos. 1971-M, 1972, 1973, 1974-H, 1975-M, 1976, 1977-M, 1978-S and 1979-C, and Administrative Appeal Nos. Ad-375-S and Ad-376-M. In request for injunctive relief (I.R.) No. 554 (California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)), the request was denied; I.R. No. 555 (Clyde A. Livingston v. City & County of San Francisco (Juvenile Probation Department)), the request was denied; I.R. No. 556 (Grossmont-Cuyamaca Community College District v. California School Employees Association & its Chapter 707), the request was denied; I.R. No. 557 (County of Riverside v. SEIU Local 721), the request was denied; and in I.R. No. 558 (San Leandro Teachers Association v. San Leandro Unified School District), the request was denied. A document containing a listing of the aforementioned decisions was made available at today's meeting.

**Motion:** Motion by Member Wesley and seconded by Member Dowdin Calvillo to close the August 7, 2008 public meeting.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

Chair Neuwald opened the meeting of October 16, 2008 and Member Dowdin Calvillo led in the Pledge of Allegiance to the Flag.

### **Minutes**

**Motion:** Motion by Member McKeag and seconded by Member Wesley that the Board adopt the minutes of the Public Meeting of PERB for August 7, 2008.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

### **Comments From Public Participants**

Chair Neuwald opened the meeting for members of the public to address the Board on any items which were not on today's agenda.

Priscilla Winslow, Assistant Chief Counsel, representing the California Teachers Association (CTA), stated that she heard that a Regional Attorney in the Los Angeles Regional Office (LARO) said that PERB would no longer schedule a second day of settlement conferences, even if the Board agent believes it is necessary to settle a case; and that actually settlement conferences will only be scheduled for half of a day, regardless of the complexity or how close to settlement the two sides may be. Ms Winslow expressed that if this was a new policy of PERB that it was, among other things, "pennywise and pound foolish." She stated that settlement conferences were usually the first and last chance that the parties have to resolve their unfair practices before going to formal hearing. She stated that the informal settlement conference saves both parties millions of dollars statewide over a fiscal year and improves labor relations. Ms. Winslow concluded by saying that she hoped that the policy was just a rumor and that PERB will continue to conduct settlement conferences as usual.

Chair Neuwald thanked Ms. Winslow for bringing this matter to the Board's attention and responded on her own behalf. She stated that she had not heard of any changes in the conduct of informal settlement conferences at PERB, surmised that other Members of the Board had not heard anything and that they may want to comment, and noted that PERB's General Counsel Tami Bogert may also want to comment regarding this issue. Chair Neuwald further stated her belief that there was no change in PERB policy regarding the conduct of settlement conferences. She commented about the circumstances where cases have spent prolonged periods of time at the settlement conference stage, were not moved forward and scheduled for formal hearing, and her belief that this delay does not serve the parties well. While this may not be the same circumstance as in Ms. Winslow's inquiry, it is also important that the

settlement process be used effectively where the conferences are held and then a determination made about the possibility of settlement.

Ms. Winslow agreed with Chair Neuwald's comments, but stated that these would be cases where one or both of the parties, or even the neutral, will agree that an entire day or even a second day of settlement conference would prove fruitful, especially in cases where settlement is likely.

Chair Neuwald expressed the historical value found by PERB in its informal settlement conference process. She agreed with Ms. Winslow that this settlement process is a very effective use of PERB staff time and helps to achieve the outcome desired by the parties.

Member Wesley commented that as a former Regional Attorney she conducted many settlement conferences. She stated that she was not aware of any policy changes in the conduct of settlement conferences. She agreed that the settlement conference process is very useful, and that even if the case does not settle that day, it sometimes sets the stage for settlement discussions to continue, either with a PERB Board agent later or among the parties themselves. Member Wesley concluded by stating her appreciation to Ms. Winslow for bringing the matter to the Board's attention and that PERB's General Counsel would follow up to clarify this issue.

General Counsel Tami Bogert thanked Ms. Winslow for bringing this matter to PERB's attention. She noted that everyone in the room seemed to be on the exact same page and unequivocally stated that—there has been no policy change—with respect to PERB's informal settlement conference process. She stated that each case is approached on a case-by-case basis, and that there is not a one-size-fits-all when it comes to informal settlements. She invited PERB's Chief Administrative Law Judge Bernard McMonigle to speak since recently, the Administrative Law Judges (ALJs) are now in PERB's informal settlement conference rotation.

Chief Administrative Law Judge Bernard McMonigle reiterated that there is no new policy setting limits on the conduct of informal settlement conferences. Mr. McMonigle stated that Board agents are encouraged to exhaust the settlement mode and often that may take a full day. However, if settlement is not imminent, they are encouraged to move the case to formal hearing. Generally, both the agency and the parties want the case to move forward if there is no settlement. If, at the end of the conference there is no settlement, the parties are encouraged to keep talking and invited to call for a second conference if thought to be helpful. If not, the parties are asked to submit dates for formal hearing before departure from the conference.

Chair Neuwald stated that both the General Counsel and Chief ALJ to clarify among PERB staff that there has been no policy change with regard to the conduct of informal settlement conferences.

Ms. Winslow thanked the Board for the reassurance regarding the informal settlement conference process.

Chair Neuwald again thanked Ms. Winslow for bringing the matter to the Board's attention.

### **Staff Reports**

#### **a. Administrative Report**

Chief Administrative Officer Eileen Potter reported on the 2008-2009 budget and briefly reported on the LARO relocation.

Ms. Potter reported that the budget for 2008-2009 was passed by the Legislature and signed by the Governor. She recapped that PERB's budget was reduced by \$370,000. She explained that as a result of the reduction, PERB eliminated two new legal positions that were previously approved. In addition, travel, library and factfinding budgets have been eliminated from PERB's budget. She also reported that although the money for the factfinding budget was cut in the budget, the proposed trailer bill language deleting PERB's requirement that it pay for factfinding services was not passed by the Legislature. Therefore, PERB is still required to pay for factfinding services, but has no allocation in which to pay for such services. She also reported that, subsequent to the passage of the budget, the Governor's Office ordered an additional budget reduction for all General Fund agencies in the amount of \$190 million – PERB's "share" is \$67,000. Given that this reduction was just made, PERB is currently working to determine what cuts it will have to make to accommodate the lost \$67,000. Ms. Potter stated that, at this time, it appears that this is a one-time reduction and not intended to be a baseline reduction. It is unknown at this time whether an additional mid-year reduction will follow for General Fund agencies.

Ms. Potter reported that lease negotiations for the new PERB LARO site in Glendale are continuing. At this time, the parties continue to discuss the subject of insurance. An update is expected within the next 24-48 hours.

#### **b. Legal Report**

General Counsel Tami Bogert reported that the case processing and litigation reports had been distributed to the Board for its review. She highlighted information from those reports, specifically since the last Public Meeting in August. With regard to case processing, Ms. Bogert reported that during the months of August and September, 199 new cases were filed, 240 case investigations were completed, and a total of 57 informal settlement conferences were conducted by staff. Case processing activities include investigations and staff disposition of cases filed with PERB (cases filed include unfair practice charges, representation matters, impasse requests and compliance assignments). Also during that same two-month period, Ms. Bogert reported that four requests for injunctive relief were considered and ultimately denied by the Board.

In matters involving litigation, Ms. Bogert first reported on the essential-employee-strike litigation. At the Public Meeting in August, she reported that in the City of San Jose case, which was appealed to the Supreme Court and review was granted, briefing was under way. In the Contra Costa County case, petition for review was also filed and granted by the

Supreme Court. In that case, briefing was delayed at the request of the Court, and the parties were told not to take any further action until notified by the Court itself. Ms. Bogert then reported on a current change in the Sacramento County essential-employee-strike case which was not yet final. The Appellate Court opinion in that case found that PERB has exclusive initial jurisdiction. The Sacramento County case has since become final, and a petition for review was filed with the Supreme Court. To date, the Supreme Court has not acted to either deny or grant the petition. In essence, all three of the essential-employee-strike cases are now at the Supreme Court. (City of San Jose v. Operating Engineers Local Union No. 3 (Local 3), Sixth Appellate District, Case No. H030272, Santa Clara County Superior Court Case No. CV064707; County of Contra Costa v. Public Employees Union Local One et al./County of Contra Costa v. CA Nurses Assn. et al., First Appellate District, Case Nos. A115095, A115118, Contra Costa County Superior Court Case Nos. MSC0601228, MSC0601227; County of Sacramento v. AFSCME Local 146 et al./County of Sacramento v. AFSCME Local 146 et al., Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court Case Nos. 06AS03704, 06AS03790.)

Ms. Bogert then reported on a matter in which PERB is a party: the Journey Charter School litigation. (California Teachers Association v. PERB; Journey Charter School, Fourth Appellate District (Division Three), Case No. G040106.) This case, brought by CTA and filed in the Fourth District Court of Appeal, challenges PERB Decision No. 1945. PERB Decision No. 1945 is a case where the Board dismissed allegations of interference and retaliation and found that the Journey Charter School did not violate the Educational Employment Relations Act (EERA) when it refused to renew the employment contracts of three teachers. As of September, briefing is complete in this case, and the Court of Appeal has scheduled oral argument. Therefore, PERB will appear and present oral argument in this case on November 18 in Santa Ana at the Fourth District Court of Appeal.

Chief ALJ Bernard McMonigle reported that with seven ALJs, there are currently 25 decisions to write and 55 cases set for formal hearing. Of the cases set for hearing, 20 are in Sacramento, 10 in Oakland and 25 in Los Angeles. In September, 23 new cases were assigned for formal hearing. Today, a 17<sup>th</sup> proposed decision is expected to be issued with an average of approximately 100 days. Mr. McMonigle reported that, as far as the number of decisions issued, the Division of Administrative Law is ahead of schedule from the last couple of years.

Mr. McMonigle also discussed the difficulty in scheduling LARO cases due to the unavailability of travel funds in PERB's 2007-2008 budget. Traditionally, 40-45 percent of new cases are filed in LARO. With two presiding ALJs in that regional office, their calendars in March are full, and hearings are now being scheduled in April. The Sacramento and Oakland Regional Offices are scheduling hearings in January, and either office could squeeze in a December hearing if needed. He reported, as a further example, out of nine assignments for formal hearing in October, seven were Los Angeles cases. As a proposal to relieve the workload at the LARO, PERB Regulation 32168(b) allows for the transfer of cases between Board agents or ALJs with notice to the parties and an opportunity to object. Specifically, Mr. McMonigle reported that under this regulation, after the hearing is held and the record is closed, the entire case would be transferred to an

ALJ in Northern California to have the decision written. This measure is being considered in hopes of having the decision written in an expeditious manner. Mr. McMonigle stated that PERB has not in the past transferred cases under this type of situation, and he is unaware of any other agencies with such a practice. In the past, cases were transferred on a limited basis, usually as a result of a retirement or a new hire. Mr. McMonigle recalled a time at PERB where a Northern California ALJ primarily presided over Los Angeles cases. Traditionally, because of the caseload and low staff at LARO, travel to Southern California by ALJs to preside over cases had been a frequent occurrence. If the ALJs are unable to travel, it is anticipated that the situation will not get better. It is possible that it could get to a point where the two ALJs at LARO preside over the hearing, and the record is then transferred for decision writing. Mr. McMonigle concluded discussion on this matter, stating that he wanted to make the Board aware of the impact of this year's budget on the Division of Administrative Law.

Member Rystrom asked Mr. McMonigle to keep the Board apprised of any problems which might occur in the proposed transferring of cases in the division so that, if necessary, they can be addressed by the Board.

Mr. McMonigle responded that he was not sure what the reaction will be by the parties to this proposal. Historically at PERB, transfer of cases in the division has been very minimal and such transfers could be grounds to file an exception to the Board. Because it is not a matter of law, at least at this point, it does not appear to be grounds for an interlocutory appeal. Mr. McMonigle stated that he would keep the Board apprised of this matter.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, recapped regarding the four bills that were enacted this session which affect statutes under PERB's jurisdiction. Assembly Bill 1949 (Evans) and Senate Bill 1182 (Ackerman) both made nonsubstantive changes to the Trial Court Employment Protection and Governance Act. There were also nonsubstantive changes made to the Meyers-Milias-Brown Act (MMBA), the Ralph C. Dills Act and EERA by Senate Bill 1498 (Committee on Judiciary) which is the annual maintenance of the codes bill. Mr. Chisholm reported that the only substantive change comes with Senate Bill 1296 (Corbett) which amends the MMBA to remove from PERB's jurisdiction, and sends to the courts, any dispute that involves interest arbitration and firefighters. Measures will be taken to update PERB's statutes, documents and website, as of January 1, to reflect all changes. Chair Neuwald commented and Mr. Chisholm confirmed that these were not urgency bills, thus they will become effective January 1, 2009.

On a final legislative note, Mr. Chisholm reported briefly on factfinding stating that Ms. Potter had just reported on this matter. He added that there was a memorandum circulated to the Board on this issue yesterday which was made available to the public at today's meeting. That memorandum summarizes the information with respect to factfinding: (1) the deletion of the \$85,000 which was budgeted previously for factfinding was approved by the Legislature this year (last year, PERB spent more than the budgeted

\$85,000); and (2) the trailer bill identified as necessary to accompany the amendment to the budget which would have removed the mandate that PERB pay for factfinding services was not approved. Mr. Chisholm concluded that the memorandum provides other detail about the levels of expenditures over the last several years that PERB has had for factfinding.

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member Rystrom that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

### **Old Business**

None.

### **New Business**

Chair Neuwald opened the meeting to public comment regarding the factfinding issue.

Dom Summa, Assistant Executive Director for Negotiations and Organizational Development, representing CTA addressed the Board. He stated that within CTA's "NOD" department, there is a responsibility to support the field staff in the areas of negotiations, training, research and school finance. It is usually members of that department staff who work very closely with the mediators and factfinders often serve on the panel or present the cases that go before factfinders throughout the State. Mr. Summa expressed one of the shared concerns, not only as a department, but also for the members of the CTA organization -- this is an attempt to shift costs from PERB to the individual districts and associations. He stated an understanding that, in some cases, the parties' ability to contract with an individual to serve as a factfinder chair at their own expense, if desired. But, under most circumstances, PERB facilitates the appointment of the factfinder chair. It is believed, stated Mr. Summa, that as mandated under EERA, PERB still has the statutory responsibility to provide these services.

Mr. Summa said that when faced with similar budgetary problems in the past, PERB reduced the rate for factfinding chairs to \$100 per day, and fewer factfinders were willing to work for that price. As a result, there were longer delays for the parties to actually get to factfinding. Mr. Summa stated a belief that the amount of money involved is a relatively small expenditure, but promotes a major benefit in the area of maintaining labor peace between labor and management in the State. Oftentimes, there are settlements achieved at factfinding, either prior to the hearing, at the hearing or immediately following the hearing. Mr. Summa commented about the talented factfinders who are able to pull the parties together and get an agreement without having to write a report. He conveyed the thought that the factfinding process is a wise use of time and a wise expenditure of funds to bring about settlements. He reiterated PERB's statutory responsibility and urged the Board to continue to provide this service. Looking at the memorandum provided to the public at today's meeting, Mr. Summa acknowledged the increase in the average number of days for factfinding and organizationally

was willing to agree to look at ways to develop cost saving options in that area. In conclusion, Mr. Summa again stated the responsibility of PERB to provide and pay for the factfinding service and cautioned the Board about setting the rate so low as to eliminate the number of available factfinders who are trying to achieve settlements between parties.

Chair Neuwald thanked Mr. Summa for appearing before the Board and asked for additional public comment.

Priscilla Winslow, again representing CTA, echoed some of the comments of her colleague, Dom Summa. In addition, she said that more than 30 years ago, the Legislature determined that collective bargaining was the best way to accomplish the goals of bringing labor peace to the public sector or to schools in particular. The memory of the debilitating 1970 Los Angeles school strike was probably on the minds of the Legislators as they digested the Aaron Report and concluded that public sector labor relations would benefit from a State-sponsored dispute resolution mechanism which found its way into EERA in the form of mediation and factfinding. Ms. Winslow continued, stating that factfinding, the impasse resolution, in particular, has grown through PERB case law. Factfinding is mandatory before either party can strike or impose its last, best offer. In its wisdom, the Legislature realized that if the State was to place so much importance on this rather elaborate impasse resolution procedure, that it needed to actually provide the experts to assist the parties in that procedure and that, of course, is the factfinding panel.

She reiterated that ensuring that PERB can get qualified persons to serve as factfinding chairs means that it must pay a realistic wage for those services. It levels the playing field between large employers and rich unions, and small employers and poor unions. It is a known fact that there are about 1,000 school districts in this State, some with only one or two employees. Those are not usually the districts that find their way to factfinding, but there are many small, impoverished employers and poor unions that cannot afford to pay for their own factfinding and that is why the State's requirement to pay for factfinding is so important. Another forgotten aspect in the legislative scheme, which Ms. Winslow wanted to remind the Board of, is that employers are reimbursed for the costs that they spend in collective bargaining activities generally, including negotiating and factfinding. She stated that she was fairly sure that the Commission on State Mandates reimburses employers for their share of the factfinders should they have to pay for it. Should the parties go out and hire their own factfinder, the employers are reimbursed whereas the unions are not reimbursed for these expenses. Ms. Winslow stated that any person with experience in labor relations knows that allowing one party in the dispute to pay for the factfinder is toxic and has the possibility to produce unconscious bias on the part of the neutral which must be avoided at all costs. If PERB steps out of its role of paying for the factfinder, the parties will be forced into an untenable situation that the Legislature did not intend when they enacted Section 3548.3. Ms. Winslow concluded stating that, as noted earlier today, the Legislature rejected PERB's attempt to be relieved of this duty and that factfinding is a service to be continued by PERB. She urged the Board to continue to pay for the factfinder, at least at the rate of the \$800 per day which appeared to be the going rate having looked at the memorandum produced at today's meeting.



Greg Eddy, representing the California Federation of Teachers, briefly addressed the Board. He said this issue was addressed at the Board's Advisory Committee meeting earlier this year and at the time he was very concerned because of the attempt of statutory language removal would result in unions and school districts paying for factfinding. He stated his pleasure that the Legislature has kept the factfinding requirement in the Government Code. Mr. Eddy stated his concerns about a possible reduction of the costs PERB pays for factfinding. As a labor relations expert, Mr. Eddy stated that he spends most of his time at the negotiation table. When he appeared at the organizational meeting last spring, Mr. Eddy spoke about labor and management negotiations in order to reach good and sound agreements that are reasonable and acceptable to both parties. He stated that factfinding is instrumental in that process and can be enormously helpful. Mr. Eddy has, in fact, been on a factfinding panel several times working with the chairperson to reach settlement without going to written decisions. He has also been an advocate on several panels in factfinding. What Mr. Eddy wanted to make clear to the Board is that the process works, and that PERB and EERA should be applauded for instituting the factfinding program. He cautioned the Board not to do anything to damage this service. Mr. Eddy went on to mention Ms. Winslow's discussion regarding the issue of equity where in the State there are very large districts and large unions who would not be affected by any PERB decision in this matter. To medium-sized district or locals or small districts and locals (who are actually the majority), if costs are increased for them, it could weigh heavily on whether these districts can afford to use the factfinding service. If these districts could not utilize factfinding services, it would be a serious injustice and would create an enormous inequity in the system.

Mr. Eddy reiterated Mr. Summa's statement regarding the parties' individual ability to hire factfinders under EERA where, in fact, many large districts do. These large districts, however, typically pay a much higher price than \$800 per day. Mr. Eddy said that one of things that PERB is accomplishing by offering the \$800 fee is maintaining a reasonable cost that factfinding chairpersons' accept. These chairpersons recognize the good job in providing and the necessity to have factfindings. Most chairpersons, if they preside in an arbitration, are paid anywhere from \$1,600 to \$2,000 per day. Mr. Eddy stated that a consideration the Board should look at is the unavailability of chairpersons if PERB were to lower its factfinding expenses unnecessarily and the possible resulting increase in other costs. As a representative for employees, Mr. Eddy stated his known difficulty with the budget crisis and the problems that occur everywhere because of it, at PERB, his own organization and probably every private business in California. Organizations must be wise when making budget decisions. Mr. Eddy quoted Mr. Summa stating that PERB's factfinding expense is a very small amount of money in the long run. He stated that what factfinding offers and what it can do to help organizations is critical, and he urged PERB to keep the \$800 per diem. In conclusion, Mr. Eddy reiterated Mr. Summa's statement of PERB's statutory obligation to fund the factfinding program.

Maureen Whelan, Lead Staff Counsel, representing the California School Employees Association (CSEA), addressed the Board, spoke about CSEA's 700 contracts in the State of California and asked the Board to look at PERB's real reason for being. Ms. Whelan stated that under the services it provides, PERB is like an umpire. Most of what happens in the State happens in bargaining between the parties. When that process breaks down is when all of the other problems occur such as injunctive reliefs and strikes. Ms. Whelan continued that the

factfinding process is a fail safe and will prevent the expenditure of a lot of other money from a lot of other problems, for PERB and the parties alike. She stated that the parties really depend upon this process, not only when there are factfinders, but the fact that there is a credible factfinding process as well. Speaking for CSEA members, Ms. Whelan stated that if PERB were to reduce its factfinding budget, it would be a problem, and that she too understood PERB's real budget issues, as well as these same issues being experienced by the school districts. She spoke about employees being laid off with 45 days notice in the last fiscal year in school districts and all the other resultant strife because there is not a lot of money. Ms. Whelan stated that factfinding is needed as one of the ways in which problems can be resolved.

Member Wesley thanked the representatives and expressed an appreciation for their appearance and comments before the Board. She stated that from her experience at PERB, she agreed that the factfinding process is a very positive process. Settlements are reached in factfinding, it brings the parties together in a different way than from when they are sitting across the table in negotiations and PERB is conscious of that fact. The decision to propose eliminating the statutory obligation to pay was not made on the basis that PERB does not value the factfinding process. This was strictly a budgetary decision. Member Wesley stated this presented a difficult choice to be made and urged constituents not to think that the factfinding process was not valued by PERB. She stated that longtime watchers of PERB with longtime utilization of PERB resources have known that PERB has functioned as a lean operation. She continued that the PERB Chief ALJ commented today on the impact some of these cuts are going to have on the charges and hearings in the Los Angeles Office. This, again, is an impact on PERB constituents. Tough budgetary times and decisions at PERB are also being experienced in the educational community. When there are tough times in the educational community, that translates into more work for PERB. Cutbacks for PERB do not translate into less workload, oftentimes there is more workload. PERB is analyzing its operations and trying to balance where it can, giving the best and timely service in the resolution of disputes. PERB is also trying to support the parties in settlement and will clarify the settlement conference issue in Los Angeles. Member Wesley stated her strong belief that factfinding is an important service and that the decision to request elimination of its statutory obligation was not due to PERB's not valuing this service.

Member Dowdin Calvillo thanked the representatives and expressed her appreciation for their appearance and comments. She also thanked PERB staff for compiling the information made available at today's meeting. She stated that the discussion regarding factfinding was an information item on today's agenda and thus, no action by the Board could be taken. Member Dowdin Calvillo then suggested that PERB conduct a Public Meeting for the purposes of discussing and possibly taking action on this matter.

Chair Neuwald, on behalf of the Board, expressed her appreciation of the representatives taking the time to attend and comment regarding factfinding at today's Public Meeting. She reiterated Member Wesley's expression of PERB's value of its factfinding program. The language in the trailer bill was perceived by PERB as a technical change to go along with the reduction in the funding. This recommendation was not in any way intended to diminish the Board finding value in the factfinding process. She also agreed with Member Dowdin Calvillo's suggestion to schedule another meeting to deal with this factfinding issue. Because

factfinding was not on today's agenda as an action item, PERB would not be taking formal action regarding this matter. Chair Neuwald stated that, after today's meeting, she would direct staff to schedule another Public Meeting and formal action could then be taken on this factfinding issue.

CTA representative Priscilla Winslow asked, now that a new fiscal year has begun, what is PERB's policy on factfinding. She stated that cases were coming through the pipeline and information from the individual factfinders is that the rate was \$800 per day, but capped at \$2,000 which was stated as the rate in July. She had also received information that PERB was paying \$0 for factfinders and wanted current information in this regard.

Chair Neuwald responded that when there was no budget, PERB did not have authority to enter into contracts. There was an Executive Order issued by the Governor containing restrictions on each agency's ability to manage contracts. PERB just recently received word of some flexibility in meeting the requirements of this Executive Order. PERB is currently looking at these matters. She again concurred with Member Dowdin Calvillo's suggestion for an additional Public Meeting in which to make a decision and let constituents know what PERB's position is on funding factfinding. Member Dowdin Calvillo stated that PERB would also need to hear back from the Governor's Office regarding this process.

Chair Neuwald gave a final statement about the decision regarding the PERB budget. She stated, that as a board, PERB will attempt to make decisions regarding its budget responsibly, which also will keep the Board viable and able to perform its statutory duties. She again expressed an appreciation of the representatives that attended today's meeting and who continue to attend PERB Public and Advisory Committee meetings, their resultant interactions with the Board and staff to give feedback and input. She then expressed the unfortunate task of tough decisions which need to be made regarding PERB's budget and that she appreciated constituent understanding in this regard. She concluded this matter and asked for any additional comments.

### **General Discussion**

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through the date designated as a Public Meeting for the purposes of factfinding as discussed today. The date for the Public Meeting regarding factfinding will immediately be posted on PERB's website and notices properly mailed to PERB constituents. PERB's regularly scheduled Public Meeting will be December 11, 2008 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

**Motion:** Motion by Member McKeag and seconded by Member Dowdin Calvillo that there being no further business, the meeting be recessed to continuous closed session.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Karen L. Neuwald, Chair